

## Calendar No. 611

104TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
104-388

### CARLSBAD IRRIGATION DISTRICT

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SEPTEMBER 30, 1996.—Ordered to be printed

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Mr. MURKOWSKI, from the Committee on Energy and Natural  
Resources, submitted the following

### REPORT

together with

### ADDITIONAL VIEWS

[To accompany S. 2015]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2015) to convey certain real property located within the Carlsbad Project in New Mexico to the Carlsbad Irrigation District, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE MEASURE

S. 2015, as ordered reported, would transfer the interests of the United States in the lands and facilities associated with the irrigation and drainage system of the Carlsbad Project in New Mexico to the Carlsbad Irrigation District except for any acquired lands on which any dam or reservoir diversion structure is located (in which case the transfer will only include the mineral estate) and storage and flow easements for any tracts under the maximum spillway elevations of Avalon and Brantley Reservoirs. The District is required to continue to manage the lands for project purposes and will assume all obligations of the United States under certain agreements for recreation and fish and wildlife purposes except that the District will not be obliged to provide financial support and will not be entitled to any revenues from the agreements.

The Districts will also assume any rights and obligations of the United States under any grazing or mineral leases. Mineral lease receipts credited to the Project will be distributed under the Fact

Finders Act of 1942. The Fact Finders Act provides generally that when water users take over operation of a project, the net profits from operation of project power, leasing of project lands (for grazing or other purposes), and sale or use of town sites are to be applied first to construction charges, second to operation and maintenance (O&M) charges, and third “as the water users may direct”.

#### BACKGROUND AND NEED

The transfer of the Carlsbad and Elephant Butte projects was the genesis for the development of S. 620, on which the Subcommittee on Forests and Public Land Management conducted a hearing on March 24, 1995 and the Committee received extensive testimony on the situation at both Elephant Butte and Carlsbad at that time. The Carlsbad Irrigation District is located in southeastern New Mexico. It takes its water from the Pecos River and serves 25,055 acres through the Bureau of Reclamation’s Carlsbad Project. The single purpose project was created in 1905 by the Bureau acquiring all dams, facilities, lands, and water rights of the privately owned Pecos Irrigation Company. The Irrigation District has had O&M responsibility since 1932 and all repayment obligations were satisfied in 1991.

#### LEGISLATIVE HISTORY

Senator Pete Domenici introduced S. 2015 on August 1, 1996. The Subcommittee on Forests and Public Land Management held a hearing on September 3, 1996.

#### COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, September 12, 1996, by a unanimous voice vote of a quorum present, recommended that the Senate pass S. 2015 as described herein.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1—Conveyance*

Subsection 1(a) provides that all right, title, and interest of the United States in and to the lands acquired lands described in subsection (b), in addition to all interests the United States holds in the irrigation and drainage systems of the Carlsbad Project and all related lands including ditch rider houses, maintenance shop and buildings, and Pecos River Flume, are conveyed by operation of law to the Carlsbad Irrigation District.

Subsection 1(b) describes the acquired lands to be transferred to the District.

Subsection 1(c) sets the terms and conditions for the conveyance of the acquired lands: (1) The lands shall continue to be managed and used for the purposes for which the Carlsbad Project was authorized; and (2) the District shall assume all rights and obligations of the United States under agreements relating to management of certain lands near Brantley Reservoir for fish and wildlife purposes and for the management and operation of Brantley Lake State Park. However, two exceptions to the previous terms and conditions are set forth: (1) The District shall not be obligated for

any financial support associated with the agreements described immediately above; and (2) the District shall not be entitled to any revenues generated by the operation of Brantley Lake State Park.

*Section 2—Lease management and past revenues from acquired lands*

Subsection 2(a) requires the Secretary of the Interior to provide to the District, within 45 days of enactment of the Act, written identification of all mineral and grazing leases in effect on the acquired lands on the date of enactment of the Act, and to notify all leaseholders of the conveyance made by the Act.

Subsection 2(b) requires the District to assume all rights and obligations of the United States for all mineral and grazing leases on the acquired lands, and to be entitled to any revenues from such leases accruing after the conveyance. The District will be required to continue to adhere to the current Bureau of Reclamation mineral leasing stipulations for the Carlsbad Project.

Subsection 2(c) provides that receipts paid into the reclamation fund that now exist as credits to the Carlsbad Project under the Mineral Lands Leasing Act of 1920 are to be made available to the District under the distribution scheme set forth in section (4)(I) of the Act of December 5, 1924 (43 U.S.C. 501; commonly referred to as the “Fact Finders Act of 1924”). This language is intended to clarify that receipts paid into the Reclamation Fund that were collected prior to the date of the conveyance shall be available to the District for purposes of offsetting reimbursable operation and maintenance costs of the Bureau.

COST AND REGULATORY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 25, 1996.*

Hon. FRANK H. MURKOWSKI,  
*Chairman, Committee on Energy and Natural Resources,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2015, a bill to convey real property located within the Carlsbad Project in New Mexico to the Carlsbad Irrigation District.

Enacting S. 2015 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2105.

2. Bill title: A bill to convey certain real property located within the Carlsbad Project in New Mexico to the Carlsbad Irrigation District.

3. Bill status: As reported by the Senate Committee on Energy and Natural Resources on September 16, 1996.

4. Bill purpose: S. 2015 would convey the irrigation and drainage system of the Carlsbad Project, New Mexico, and related lands and property, including the surface and mineral estates, to the Carlsbad Irrigation District. The district would assume all rights and obligations of the United States under mineral and grazing leases on the acquired lands and would be entitled to all revenues acquired from such leases after the conveyance. Additionally, amounts paid into the reclamation fund prior to enactment that have been recorded as construction credits to the Carlsbad Project would be credited toward the district's ongoing operation and maintenance obligation to the federal government.

5. Estimated cost to the Federal Government: CBO estimates that enacting H.R. 3258 would increase direct spending by \$1.7 million in 1997, and by about \$200,000 each year thereafter. Implementing the bill also would increase administrative costs at the Bureau of Reclamation in 1997, subject to the availability of appropriated funds, by about \$200,000. The effects on direct spending are summarized in the following table.

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
CHANGES IN DIRECT SPENDING						
Estimated budget authority .....	2	(1) <sup>1</sup>	(1)	(1)	(1)	(1)
Estimated outlays .....	2	(1) <sup>1</sup>	(1)	(1)	(1)	(1)

<sup>1</sup> Less than \$500,000.

The costs of this bill fall within budget function 300.

6. Basis of estimate: S. 2015 would provide a monetary credit for receipts paid into the reclamation fund prior to conveyance. The size of the credit is unclear because the provision incorrectly cites the Mineral Leasing Act of 1920, which covers payments from leases on all withdrawn and public domain lands (lands that have never passed out of federal ownership) and which governs no receipts that have been recorded as construction credits to the Carlsbad project. The apparent intent of the provision is to identify for transfer amounts that represent credits to the Carlsbad Project under the Mineral Leasing Act for Acquired Lands of 1947. Hence, CBO estimates that enacting this provision would likely result in a credit to the district of \$1.5 million in 1997, the amount which is attributed to the district under the 1947 act. This credit would be used by the district to reimburse the Bureau of Reclamation for the district's share of operations and maintenance expenses. The value of the monetary credit would be counted as direct spending in the year it is issued.

Enacting S. 2015 also would increase direct spending by reducing offsetting receipts in 1997 and subsequent years. The bill would transfer the right to all future receipts from mineral and grazing leases on the specified lands. This would result in a loss of offsetting receipts totaling about \$200,000 a year beginning in 1997.

Finally, based on information provided by the Bureau of Reclamation, CBO estimates that enacting S. 2015 would result in discretionary spending of about \$200,000 in 1997 for administrative costs associated with transferring the specified lands, subject to the availability of appropriated funds.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting S. 2015 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill. The following table summarizes the estimated pay-as-you-go impact.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays .....	0	2	0
Change in receipts .....	(1) <sup>1</sup>	(1) <sup>1</sup>	(1) <sup>1</sup>

<sup>1</sup> Not applicable.

8. Estimated impact on State, local, and tribal governments: S. 2015 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) and would impose no costs on state, local, or tribal governments. The Carlsbad Irrigation District would receive, at no cost, all the benefits conveyed by this bill, including the irrigation and drainage system, related lands and property, and surface and mineral estates. These benefits would include the right to all future receipts from mineral and grazing leases on the lands, which we estimate will total about \$200,000 per year. Further, the district would be able to use the monetary credit provided by this bill to reimburse the Bureau of Reclamation for its share of operations and maintenance expenses, thus avoiding future cash payments averaging about \$30,000 per year.

9. Estimated impact on the private sector: This bill would impose no new private-sector mandates as defined in Public Law 104-4.

10. Previous CBO estimate: On September 25, 1996, CBO provided an estimate for H.R. 3258, as reported by the House Committee on Resources on September 18, 1996. The two bills and their estimated costs are similar.

11. Estimate prepared by: Federal Cost Estimate: Gary Brown and Victoria Heid. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Patrice Gordon.

12. Estimate approved by: Robert A. Sunshine (for Paul N. Van de Water, Assistant Director for Budget Analysis).

#### FEDERAL MANDATE EVALUATION

The Congressional Budget Office has determined that S. 2015 contains no new private sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation

of the regulatory impact which would be incurred in implementing S. 2015. The bill is not a regulatory measure in the sense of imposing government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

The paperwork requirements imposed on the Department of the Interior as a result of the conveyance required by this Act are not believed to be significant.

#### EXECUTIVE COMMUNICATIONS

A Statement of Administration Position has not been submitted as of the date this report was filed. When the SAP is available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

#### ADDITIONAL VIEWS BY SENATOR PETE V. DOMENICI

In May, 1995, the Subcommittee on Forests and Public Land Management held a hearing on S. 620, the Reclamation Facilities Transfer Act. At that hearing, it became very clear that a more project-specific approach would be needed to provide legislative support for the Clinton Administration's commitment to "aggressively pursue" the transfer of ownership and control of certain project lands and facilities from the Bureau of Reclamation to the various project beneficiaries, "... where it makes sense."

Since that time, the Bureau and the Carlsbad Irrigation District have been working together to craft a legislative proposal that would address the specific issues involved in the transfer of acquired lands and certain irrigation facilities from the Bureau to the District. On August 1, 1996, I introduced S. 2015 to address the major concerns raised by the Administration and the minority with the earlier legislation.

At the Subcommittee hearing on September 5, the Administration raised additional concerns with S. 2015, as it was introduced. In response to these concerns, I have been working with the Bureau to craft suitable language that will allow the Secretary of the Interior to complete the facilities transfer to the Carlsbad Irrigation District, while providing the District with assurances that the transfer process will be done in a timely and cost effective manner.

When the Committee agreed to report S. 2015 for consideration by the Senate, I restated my commitment to work with the Bureau in an effort to resolve the remaining issues of concern. Although several issues had not been fully resolved, I believed that an agreement was very close, and I indicated my intent to offer a substitute amendment on the Senate floor that would clarify a number of provisions and reflect the resolution of outstanding concerns.

Among the provisions that required some clarification is the subsection dealing with the availability of receipts that have been paid into the reclamation fund since the District completed its contractual obligation for repayment of construction costs in 1991. As currently drafted, subsection 2(c) remains somewhat unclear as to the funds available to the District for project purposes. In order to clarify my intent, I wish to state that any amendment I offer will contain the following clarification for subsection 2(c).

AVAILABILITY OF AMOUNTS PAID INTO THE RECLAMATION FUND.—Receipts paid into the reclamation fund which only exist as construction credits to the Carlsbad Project under the terms of the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359) as amended, as explained by Interior Solicitor's Opinion M–36969 dated September 8, 1989, entitled Proper Disbursement and Crediting of Mineral Leasing Revenues from Reclamation Acquired Lands, shall be made available to the District as credits towards

its ongoing operation and maintenance obligation to the United States until such credits are depleted.

This legislation, as introduced, or as I would agree to amend it, is intended to provide the Secretary of the Interior with the authority to convey lands acquired by the Bureau for the purposes of constructing and operating the Carlsbad Project. All costs to the United States associated with the acquisition having been repaid by the water users under the terms of the construction repayment contract, these lands should revert back to the those same water users for whom the project was constructed. In the end, I intend to make it perfectly clear that this legislation would in no way affect the management or ownership of withdrawn public domain, and similarly that it would in no way affect the multi-purpose functions of the Brantley Reservoir Project, which was superimposed over a part of the single purpose Carlsbad Project.

PETE V. DOMENICI.



CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 2015, as ordered reported.

